

The House Committee on Judiciary Non-Civil offers the following substitute to HB 424:

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 15 of Title 16 of the Official Code of Georgia Annotated, relating to street
2 gang terrorism and prevention, so as to include certain sex crimes into the definition of
3 criminal gang activity; to revise and provide for a definition; to amend Title 24 of the Official
4 Code of Georgia Annotated, relating to evidence, so as to revise rules pertaining to the
5 admissibility of a complainant's past sexual behavior in prosecutions for certain sexual
6 offenses; to provide for exceptions; to provide for related matters; to provide for
7 applicability; to provide for an effective date; to repeal conflicting laws; and for other
8 purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 Chapter 15 of Title 16 of the Official Code of Georgia Annotated, relating to street gang
12 terrorism and prevention, is amended by revising Code Section 16-15-3, relating to
13 definitions, as follows:

14 "16-15-3.

15 As used in this chapter, the term:

16 (1) 'Criminal gang activity' means the commission, attempted commission, conspiracy
17 to commit, or solicitation, coercion, or intimidation of another person to commit any of
18 the following offenses ~~on or after~~ between July 1, 2006, and until the effective date of this
19 Code section:

20 (A) Any offense defined as racketeering activity by Code Section 16-14-3;
21 (B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;
22 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,
23 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;
24 (D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and
25 other offenses related to confinement;

- 26 (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous
27 instrumentalities and practices;
28 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or
29 42-5-19, relating to the security of state or county correctional facilities;
30 (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging
31 a child to escape from custody;
32 (H) Any offense of criminal trespass or criminal damage to property resulting from any
33 act of gang related painting on, tagging, marking on, writing on, or creating any form
34 of graffiti on the property of another;
35 (I) Any criminal offense committed in violation of the laws of the United States or its
36 territories, dominions, or possessions, any of the several states, or any foreign nation
37 which, if committed in this state, would be considered criminal gang activity under this
38 Code section; and
39 (J) Any criminal offense in the State of Georgia, any other state, or the United States
40 that involves violence, possession of a weapon, or use of a weapon, whether designated
41 as a felony or not, and regardless of the maximum sentence that could be imposed or
42 actually was imposed.

43 (2) 'Criminal gang activity' means the commission, attempted commission, conspiracy
44 to commit, or solicitation, coercion, or intimidation of another person to commit any of
45 the following offenses on and after the effective date of this Code section:

- 46 (A) Any offense defined as racketeering activity by Code Section 16-14-3;
47 (B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;
48 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,
49 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;
50 (D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and
51 other offenses related to confinement;
52 (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous
53 instrumentalities and practices;
54 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or
55 42-5-19, relating to the security of state or county correctional facilities;
56 (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging
57 a child to escape from custody;
58 (H) Any offense of criminal trespass or criminal damage to property resulting from any
59 act of gang related painting on, tagging, marking on, writing on, or creating any form
60 of graffiti on the property of another;
61 (I) Any criminal offense committed in violation of the laws of the United States or its
62 territories, dominions, or possessions, any of the several states, or any foreign nation

which, if committed in this state, would be considered criminal gang activity under this Code section:

(J) Any criminal offense in the State of Georgia, any other state, or the United States that involves violence, possession of a weapon, or use of a weapon, whether designated as a felony or not, and regardless of the maximum sentence that could be imposed or actually was imposed; and

(K) Any offense defined in Code Section 16-5-46 as trafficking persons for labor servitude or sexual servitude, 16-6-10 as keeping a place of prostitution, 16-6-11 as pimping, or 16-6-12 as pandering.

(3) 'Criminal street gang' means any organization, association, or group of three or more persons associated in fact, whether formal or informal, which engages in criminal gang activity as defined in paragraph (1) of this Code section. The existence of such organization, association, or group of individuals associated in fact may be established by evidence of a common name or common identifying signs, symbols, tattoos, graffiti, or attire or other distinguishing characteristics, including, but not limited to, common activities, customs, or behaviors. Such term shall not include three or more persons, associated in fact, whether formal or informal, who are not engaged in criminal gang activity."

SECTION 2.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by revising Code Section 24-4-412, relating to complainant's past sexual behavior not admissible in prosecutions for certain sexual offenses and exceptions, as follows:

"24-4-412.

(a) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault with the intent to rape in violation of Code Section 16-5-21; trafficking persons for labor servitude or sexual servitude in violation of Code Section 16-5-46; aggravated sodomy or sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code Section 16-6-3; aggravated child molestation or child molestation in violation of Code Section 16-6-4; keeping a place of prostitution in violation of Code Section 16-6-10; pimping in violation of Code Section 16-6-11; pandering in violation of Code Section 16-6-12; incest in violation of Code Section 16-6-22; sexual battery in violation of Code Section 16-6-22.1; or aggravated sexual battery in violation of Code Section 16-6-22.2, evidence relating to the past sexual behavior of the complaining witness shall not be admissible, either as direct evidence or on cross-examination of the complaining witness or other witnesses, except as provided in this Code section. For the purposes of this Code section, evidence of past sexual behavior includes, but is not limited to, evidence of the

99 complaining witness's marital history, mode of dress, general reputation for promiscuity,
100 nonchastity, or sexual mores contrary to the community standards.

101 (b) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault
102 with the intent to rape in violation of Code Section 16-5-21; trafficking persons for labor
103 servitude or sexual servitude in violation of Code Section 16-5-46; aggravated sodomy or
104 sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code Section
105 16-6-3; aggravated child molestation or child molestation in violation of Code Section
106 16-6-4; keeping a place of prostitution in violation of Code Section 16-6-10; pimping in
107 violation of Code Section 16-6-11; pandering in violation of Code Section 16-6-12; incest
108 in violation of Code Section 16-6-22; sexual battery in violation of Code Section
109 16-6-22.1; or aggravated sexual battery in violation of Code Section 16-6-22.2, evidence
110 relating to the past sexual behavior of the complaining witness may be introduced if the
111 court may admit the following evidence relating to the past sexual behavior of the
112 complaining witness, following the procedure described in subsection (c) of this Code
113 section, finds that the past sexual behavior directly involved the participation of the
114 accused and finds that the evidence expected to be introduced supports an inference that
115 the accused could have reasonably believed that the complaining witness consented to the
116 conduct complained of in the prosecution:

117 (1) Evidence of specific instances of a victim's or complaining witness's sexual behavior,
118 if offered to prove that someone other than the defendant was the source of semen, injury,
119 or other physical evidence;

120 (2) Evidence of specific instances of a victim's or complaining witness's sexual behavior
121 with respect to the defendant if it supports an inference that the accused could have
122 reasonably believed that the complaining witness consented to the conduct complained
123 of in the prosecution;

124 (3) Evidence of specific instances of a victim's or complaining witness's sexual behavior
125 with respect to the defendant or another person if offered by the prosecutor; and

126 (4) Evidence whose exclusion would violate the defendant's constitutional rights.

127 (c) The procedure for introducing evidence as described in subsection (b) of this Code
128 section shall be as follows:

129 (1) At the time the defense seeks to introduce evidence which would be covered by
130 subsection (b) of this Code section, the defense shall notify the court of such intent,
131 whereupon the court shall conduct an in camera hearing to examine the accused's offer
132 of proof; If a party intends to offer evidence under subsection (b), the party must:

133 (A) File a motion that specifically describes the evidence and states the purpose for
134 which it is to be offered; and

(B) Do so at least three days before trial unless the court, for good cause, sets a different date; and

(2) At the conclusion of the hearing, if the court finds that any of the evidence introduced at the hearing is admissible under subsection (b) of this Code section or is so highly material that it will substantially support a conclusion that the accused reasonably believed that the complaining witness consented to the conduct complained of and that justice mandates the admission of such evidence, the court shall by order state what evidence may be introduced by the defense at the trial of the case and in what manner the evidence may be introduced; and

(3)(2) Before admitting the evidence under this Code section, the court shall conduct an in camera hearing to examine the merits of the motion. The defense may then introduce evidence pursuant to the order of the court."

SECTION 3.

Said title is further amended by revising Code Section 24-8-820, relating to testimony as to child's description of sexual contact or physical abuse, as follows:

"24-8-820.

"24-8-820.

(a) A statement made by a child younger than 16 years of age describing any act of sexual contact or physical abuse performed with or on such child by another or with or on another in the presence of such child shall be admissible in evidence by the testimony of the person to whom made if the proponent of such statement provides notice to the adverse party prior to trial of the intention to use such out-of-court statement and such child testifies at the trial, unless the adverse party forfeits or waives such child's testimony as provided in this title, and, at the time of the testimony regarding the out-of-court statements, the person to whom the child made such statement is subject to cross-examination regarding the out-of-court statements.

(b) This Code section shall apply to any motion made or hearing or trial commenced on or after the effective date of this subsection."

SECTION 4.

Section 1 of this Act shall apply to offenses occurring on or after the effective date of this Act. Sections 2 and 3 of this Act shall apply to any motion made or hearing or trial commenced on or after the effective date of this Act.

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

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SECTION 6.

170 All laws and parts of laws in conflict with this Act are repealed.